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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

SADE DAVIS,

Defendant and Appellant.

G056321

(Super. Ct. No. 17WF0132)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Michael A. Leversen, Judge. Affirmed.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and Yvette M. Martinez, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted Sade Davis of robbery after she stole items from a drugstore and threatened to fight the store supervisor in the process. Davis asserts there was insufficient evidence she took the property from the victim by means of fear. We disagree and affirm the judgment.

## I.

### FACTS

The events in question occurred at a CVS store in Los Alamitos at about 9:50 p.m., shortly before closing time.

The store supervisor on duty that evening testified she was walking toward the back of the store when she saw two women, later identified as Davis and Clarice Ross, putting baby formula and other items into duffel bags. She became suspicious and asked the women if they needed help. The women responded, “No, bitch.” This made the supervisor nervous.

According to the supervisor, she told the women to put the items back and get out, and the women laughed in response. Davis then added, “*No, bitch. Fuck you. Do you want to fight?*” Davis’s verbal threat, their close proximity, and Davis’s aggressive body language frightened the supervisor and made her “feel . . . scared” for her safety and concerned she was “going to get hit.” Davis drew closer, and the supervisor took a step back from Davis “[b]ecause [she] was scared that [Davis was] going to hit [her].” The supervisor made no further efforts to stop Davis and yelled to a cashier to call the police.

Store video surveillance footage captured a portion of this interaction. Although it contained no audio component, the footage corroborated the supervisor’s testimony about Davis placing items in the duffel bag, Davis approaching the supervisor, and the supervisor taking a step back from Davis.

Clarice Ross, Davis’s friend and accomplice, testified on Davis’s behalf after pleading guilty to theft-related charges. She gave a markedly different account of

the encounter. Ross denied putting items from the shelves into bags and said she and Davis did not threaten or use any profanity against the supervisor. According to Ross, the store supervisor approached them and said, “These black bitches are stealing.” Ross asked the supervisor why she was being unprofessional, and the supervisor said it was because she knew what they were doing. The supervisor then shouted out, “We have people stealing here.”

After the women’s encounter, Davis and Ross tried to leave the store. According to the supervisor, a CVS customer tried to close the door to prevent Davis from escaping, but Davis “bulldozed” her in an attempt to flee. A police officer arrived, saw Davis fighting with the customer, and broke up the fight. The officer put Davis in handcuffs when Davis tried to get away.

The officer observed what he described as a “getaway car” parked in close proximity to the store’s front doors. A search of the car revealed the duffle bag shown in the surveillance video and large amounts of baby formula and vitamins, similar to the items taken from the CVS store, which suggested to the officer that Davis and Ross were going from store to store stealing those specific goods. The officer also discovered a large amount of cash inside the vehicle.

A jury convicted Davis of second degree robbery and misdemeanor battery. The trial court sentenced her to 180 days in county jail and placed her on three years’ probation. Davis timely appealed.

## II.

### DISCUSSION

Davis contends the evidence was “insufficient to establish beyond a reasonable doubt that [she] used force or fear to commit the theft” as required to sustain a robbery conviction. We disagree.

When evaluating the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the prosecution to determine

whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Valdez* (2004) 32 Cal.4th 73, 104.) If the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. (*People v. Koontz* (2002) 27 Cal.4th 1041, 1078.)

Penal Code<sup>1</sup> section 211 defines robbery as “the felonious taking of personal property in the possession of another, from his person or his immediate presence, and against his will, accomplished by means of *force or fear*.” (Italics added.) The force or fear element of robbery is stated in the disjunctive. “It is not necessary that the robbery be accomplished by means of both force and fear.” (*People v. Winters* (1958) 163 Cal.App.2d 619, 623.) Use of fear or intimidation without force to induce the victim to part with property is sufficient to constitute a robbery. (*People v. Brew* (1991) 2 Cal.App.4th 99, 104 (*Brew*).)

Section 212 defines fear as including “fear of an unlawful injury to the person or property of the person robbed.” (§ 212, subd. (1).) To establish a robbery was committed by means of fear, the prosecution must present evidence the victim was in fact afraid and the victim's fear facilitated the perpetrator's robbery. (*People v. Morehead* (2011) 191 Cal.App.4th 765, 772 (*Morehead*).) The fear necessary for robbery is “subjective in nature.” (*People v. Anderson* (2007) 152 Cal.App.4th 919, 946.)

“The element of fear for purposes of robbery is satisfied when there is sufficient fear to cause the victim to comply with the unlawful demand for his property.’ [Citations.] It is not necessary that there be direct proof of fear; fear may be inferred from the circumstances in which the property is taken. [Citation.] [¶] If there is evidence from which fear may be inferred, the victim need not explicitly testify that he or

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<sup>1</sup> All further statutory references are to this code unless otherwise noted.

she was afraid. [Citations.] Moreover, the jury may infer fear ““from the circumstances despite even superficially contrary testimony of the victim.”” [Citation.] [¶] The requisite fear need not be the result of an express threat or the use of a weapon. [Citations.] Resistance by the victim is not a required element of robbery [citation], and the victim’s fear need not be extreme to constitute robbery [citation]. All that is necessary is that the record show ““conduct, words, or circumstances reasonably calculated to produce fear. . . .”” [Citation.] [¶] Intimidation of the victim equates with fear. [Citation.]” (*Morehead, supra*, 191 Cal.App.4th at pp. 774-775.)

There was substantial evidence Davis took the property by means of fear. The store supervisor repeatedly testified she feared for her safety after Davis verbally threatened her by saying, “Bitch, fuck you, you want to fight?” The supervisor further testified she took a step back from Davis because she was afraid of being hit and made no further efforts to stop Davis. Although that testimony alone supports Davis’s conviction (Evid. Code, § 411 [“the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact”]), here the store surveillance video corroborates her testimony.

A reasonable jury could conclude from this evidence that the supervisor was afraid of Davis and the fear enabled Davis to accomplish the crime. A reasonable jury also could choose to discredit Ross’s conflicting testimony, given Ross’s apparent bias and inconsistencies between her testimony and the video footage.

Davis suggests any fear by the supervisor was unreasonable. Not so. The jury reasonably could conclude the supervisor reasonably feared for her safety after Davis threatened to fight her and stepped toward her.

Davis contends she should not be held liable for a robbery based on a single statement, particularly since she did not use a weapon or physically assault the supervisor. But weapons and assault “are not requisites for a finding of robbery”; intimidation can be established by conduct, words, or circumstances reasonably

calculated to produce fear. (*Brew, supra*, 2 Cal.App.4th at p. 104.) Here, the prosecution established intimidation and fear through Davis's threatening words ("No, bitch. Fuck you. Do you want to fight?"), aggressive body language, the supervisor's fear of being hit, and the supervisor's physical reaction to the threat (backing up).

Viewing the record in the light most favorable to the prosecution, we conclude there was sufficient evidence to support the jury's finding that Davis took the property by means of fear.

### III.

#### DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.